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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL

KELLY DOE,

PLAINTIFF,

vs.

THE ACCELERATED SCHOOLS;
JONATHAN WILLIAMS and DOES 1
through 100, INCLUSIVE

DEFENDANTS.

CASE NO. 19STCV02088

Assigned to Hon. Gregory Keosian in Dept. 61

**PLAINTIFF'S NOTICE OF RULING ON
DEFENDANTS' MOTION TO COMPEL
COMPLIANCE WITH BUSINESS
RECORDS SUBPOENA, AND TO
COMPEL PLAINTIFF TO AUTHORIZE
THE RELEASE OF HER MEDICAL
RECORDS**

Date: October 8, 2019

Time: 9:00 a.m.

Dept.: 61

Action Filed: January 22, 2019

Trial Date: November 10, 2020

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on October 8, 2019, Defendants' Motion to Compel Compliance with Business Records Subpoena, and to Compel Plaintiff to Authorize the Release of her Medical Records, came for regular hearing in Department 61 of the above entitled Court with the Honorable Gregory Keosian presiding. Armand J. Jaafari from the LAW OFFICES OF MARYANN P. GALLAGHER, appeared on behalf of Plaintiff Kelly Doe. Antony Pizarro from McCUNE & HARBER, LLP, appeared on behalf of Defendants The Accelerated Schools and

Jonathan Williams. Denise M. Calkins from Callahan Thompson Sherman & Caudill, LLP,
appeared on behalf of Anchor Counseling Group.

After consideration of the parties' briefing and oral argument of counsel, the Court adopted
the tentative ruling (attached hereto as Exhibit 1). Plaintiff agreed to give notice.

DATED: October 9, 2019

LAW OFFICES OF MARYANN P. GALLAGHER



MARYANN P. GALLAGHER

ARMAND J. JAAFARI

Attorneys for Plaintiff KELLY DOE

Case Number: 19STCV02088 **Hearing Date:** October 08, 2019 **Dept:** 61

Defendants The Accelerated Schools and Jonathan Williams's Motion to Compel Compliance with Business Records Subpoena and Authorizations is DENIED. No sanctions are awarded.

I. **MOTION TO COMPEL — DEPOSITION SUBPOENA**

“If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.” (Code Civ. Proc. § 1987.1, subd. (a).) A party may bring a motion under this section. (Code Civ. Proc. § 1987.1, subd. (b)(1).)

Defendants move to compel non-party Anchor Counseling Group (“Anchor”) to comply with a deposition subpoena for production of business records issued on June 25, 2019. The subpoena seeks the following records:

Any and all documents, paper and digital records, including but not limited to, all office, emergency room, inpatient/outpatient charts and records either in hard copy or electronic and/or faxed. Any and all records of payment and /or discount regarding any medical billing as well as the bills themselves, billing information, including but not limited to procedure and diagnosis codes, CPT codes, statements, computer printouts, itemized breakdown of all charges, payments, adjustments/write-offs or balance due, including but not limited to, all charges, credits, payments, adjustments and/or write-offs, and the sources of each, such as all EOBs from any insurance carrier reflecting any and all credits and adjustments and write-offs to the bills by virtue of any payments and/or contractual agreements/adjustments, including fees, etc. for professional services including Medicare, Medicaid, etc., pertaining to Kelly Fletcher, born on UNK with SS# UNK, from any and all dates. Including all electronic communications to and from the patient.

(Motion Exh. 6.)

Defendants argue that the subpoena seeks relevant information because Doe has pleaded that Defendants' actions caused her ongoing and permanent emotional distress and pain. (Motion at pp. 8–9.) Doe in turn objects that the subpoena is overbroad in time and scope, in that they seek all medical and mental health records in the possession of Anchor. (Opposition at pp. 5–6.)[\[1\]](#)

The California Constitution protects an individual's right to privacy. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1013.) The right to privacy extends to medical records. (*John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1198.) Communications between patients and their physicians or psychotherapists are also protected by statutory privileges. (Evid. Code §§ 994 [physician-patient], 1014 [psychotherapist-patient].)

None of these protections or privileges is absolute. Physician-patient privilege does not exist if the communication sought is “relevant to an issue concerning the condition of the patient in a proceeding to recover damages on account of the conduct of the patient if good cause for disclosure of the communication is shown.” (Evid. Code § 999.) Likewise, no privilege exists for patient-psychotherapist communications if “relevant to an issue concerning the mental or emotional condition of the patient” if such issue has been tendered by the patient. (Evid. Code § 1016, subd. (a).)

In the constitutional context, “[t]he party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.)

“[W]hile the filing of a lawsuit may implicitly bring about a partial waiver of one's constitutional right of associational privacy, the scope of such ‘waiver’ must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities. Therefore . . . an implicit waiver of a party's constitutional rights encompasses only discovery directly relevant to the plaintiff's claim and essential to the fair resolution of the lawsuit.” (*Vinson, supra*, 43 Cal.3d at p. 842.)

The present subpoena sweeps far beyond those issues “directly relevant to the plaintiff’s claim and essential to the fair resolution of the lawsuit,” because it seeks all the records related to Doe in Anchor’s possession, full stop. Although Doe has enacted a limited waiver of the privilege by placing certain conditions at issue — Defendants identify severe emotional distress, anguish, humiliation, embarrassment, fright, shock, pain discomfort, anxiety, post-traumatic stress disorder, depression, and panic, as well as bilateral TMJ pain, chest pain, nausea, trouble swallowing, dizziness, lightheadedness, nerve pain, and weight gain, identified in Doe’s pleading or interrogatory responses (Motion at pp. 4–5) — Defendants neglect that the waiver extends only to those conditions placed at issue, and not to Doe’s medical and mental history as a whole.^[2] As such, the subpoena is properly quashed.

Defendants argue that they are amenable to limiting the subpoena to five years preceding the filing of the Complaint to the present. (Reply at p. 4.) The court agrees that a temporal limitation is necessary. But such a limitation would still encompass a broad array of records not directly relevant to Doe’s claims. Defendants’ proposed limitation falls short.

Although Defendants do not ask this court to enforce subpoenas against non-parties Kaiser and Dr. Nancy Lonsdorf, other medical providers that Doe has identified as pertinent to this case, they ask the court to compel Doe to authorize the production of medical records from those entities. (Motion at pp. 10–11.) This court will not order Doe to authorize the disclosure, because the proposed authorization, much like the Anchor subpoena, has no apparent limitations.

Defendants’ Motion to Compel Compliance with Subpoena and Compel Authorization is DENIED.

“Except as specified in subdivision (c), in making an order pursuant to motion made under subdivision (c) of Section 1987 or under Section 1987.1, the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney’s fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive.” (Code Civ. Proc. § 1987.2, subd. (a).)

The court declines to award sanctions here against Defendants, because their pursuit of the records in question is at least partially justified by Doe’s limited waiver of the privilege as to those conditions directly put at issue in this case.

The court encourages the parties to meet and confer regarding the scope of future subpoenas along these lines. The court further takes note of Anchor’s Opposition to this motion, which asks

that any subpoena not leave it to the responding entity to determine what records are “relevant” to Doe’s claims. (Anchor Opposition at p. 5.) Any deposition testimony sought by Anchor must be limited in a similar manner to a document subpoena, given the limited nature of Doe’s waiver.

[1] Doe argues that Defendants failed to meet and confer before filing this motion. (Opposition at p. 10.) There is no requirement in the subpoena statute, to the court’s knowledge, that the parties meet and confer before filing a motion to compel compliance. (*See* Code Civ. Proc. § 1987.1.) But the court may consider the parties’ meet-and-confer efforts in determining whether sanctions are appropriate. (*See* Code Civ. Proc. § 1987.2, subd. (a).)

[2] Defendants argue that Doe waived the privilege again by merely objecting to the subpoena instead of filing a motion to quash. (Motion at p. 9.) But the statute allowing a party to file a motion to quash does not state that such a motion is necessary to preserve the party’s objections. (*See* Code Civ. Proc. § 1985.3, subd. (g).) And the case authority that Defendants cite in their favor state that a plaintiff’s “failure to take any action whatsoever to claim the psychotherapist-patient privilege constituted a waiver of the privilege,” not that a motion to quash was necessary to claim the privilege. (*Inabnit v. Berkson* (1988) 199 Cal.App.3d 1230, 1238–39.)

1 **PROOF OF SERVICE (2015.5 C.C.P.)**

2 STATE OF CALIFORNIA)

3) ss.

4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is: 205 South Broadway, Suite 920, Los
7 Angeles, California 90012.

8 On October 9, 2019, I served on the parties of record in this action the foregoing document
9 described as **PLAINTIFF'S NOTICE OF RULING ON DEFENDANTS' MOTION TO**
10 **COMPEL COMPLIANCE WITH BUSINESS RECORDS SUBPOENA, AND TO COMPEL**
11 **PLAINTIFF TO AUTHORIZE THE RELEASE OF HER MEDICAL RECORDS** addressed to
12 the parties on the attached service list.

13 ☐ **BY MAIL** (C.C.P. '1013(a) - I caused the aforementioned document(s) to be served upon
14 the addressee as indicated on the attached **service list**. I am readily familiar with the firm's practice
15 of collection and processing correspondence for mailing. Under that practice it would be deposited
16 with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles,
17 California in the ordinary course of business. I am aware that on motion of the party served, service
18 is presumed invalid if postal cancellation date or postage meter date is more than one day after date
19 of deposit for mailing in affidavit.

20 ☐ **BY FACSIMILE** (C.C.P. '1013(e); C.R.C. 2.306) - I caused the facsimile transmission to
21 the facsimile number(s) indicated on the attached service list. Upon completion of the said facsimile
22 transmission, the facsimile machine issued a report showing the transmission was complete and
23 without error.

24 ☒ **BY GSO** (C.C.P. '1013(c) - I caused the aforementioned document(s) to be served by GSO,
25 upon the addressee as indicated on the attached service list.

26 Executed on October 9, 2019, at Los Angeles, California.

27 I declare under penalty of perjury under the laws of the State of California that the above is true
28 and correct.



PAM DELGADO

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